

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1712

SPONSOR: Senator Meek

SUBJECT: Absentee Ballot Requests; Criminal Violations

DATE: March 20, 2001      REVISED: 04/05/01      \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>APJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 1712 prohibits a person from removing a previously-submitted request for an absentee ballot from a supervisor of elections office, and prohibits any person other than the elector, a member of the elector’s immediate family, or the elector’s legal guardian from making any correction or addition to a previously-submitted written absentee ballot request.

Each offense up to the fifth offense is a first degree misdemeanor. Beginning with the fifth violation, each violation constitutes a third-degree felony.

This bill creates section 104.046 of the Florida Statutes.

**II. Present Situation:**

Florida law provides that a voter registration number (“VRN”) be included with all absentee ballot requests. Section 101.62(1)(b)4., F.S. In the 2000 Presidential election, the Republican Party mailed out pre-printed absentee ballot request forms to numerous registered voters. Thousands of Republican Party mailings in Seminole and Martin counties, however, either failed to include the voter’s pre-printed VRN or a space for the voter to write-in his or her VRN. As a result, the supervisor of elections received thousands of technically-deficient absentee ballot requests.

Republican Party representatives went to both supervisors of elections’ offices. In Seminole County, the supervisor allowed the representatives access to the absentee ballot requests to fill-in missing VRNs. In Martin County, the supervisor allowed representatives to physically remove the ballot requests from the supervisor’s office for the same purpose. They were subsequently

returned with VRNs filled-in. Both supervisors accepted the amended ballot requests, and mailed absentee ballots to the electors identified on the request forms.

Lawsuits were filed by electors in both counties, challenging the legality of amending absentee ballot request forms and seeking the invalidation of thousands of absentee ballots countywide. The Florida Supreme Court ultimately determined that while there may not have been strict compliance with the statutory requirements for requesting absentee ballots, such a failure was not sufficient to warrant the drastic remedy of invalidating legally-cast ballots.<sup>1</sup>

The Court, however, strongly admonished the *supervisors* for their failure to adhere to the law:

We especially note, however, that at the conclusion of its order, the trial court found that the Supervisor of Elections of Seminole County exercised faulty judgment in first rejecting completely the requests in question, and compounded the problem by allowing third parties to correct the omissions on the forms. . . . We find the Supervisor’s conduct in this case troubling and we stress that our opinion in this case:

[I]s not to be read as condoning anything less than strict adherence by election officials to the statutorily mandated election procedures. . . . [T]his case [does not] concern[ ] potential sanctions for election officials who fail to faithfully perform their duties. It is for the legislature to specify what sanction should be available for enforcement against election officials who fail to faithfully perform their duties.<sup>2</sup>

Florida law provides that any person who requests an absentee ballot on behalf of an elector in violation of the law is guilty of a third-degree felony. It is unclear whether amending an absentee ballot request form submitted by a voter would constitute a “request” “on behalf of” an absentee elector. Thus, it is not clear that the criminal penalty would apply to the party representatives who amended the ballot request forms.

### III. Effect of Proposed Changes:

Senate Bill 1712 prohibits:

- Any person from removing a previously-submitted request for an absentee ballot from a supervisor of elections office; and
- Any person other than the elector, a member of the elector’s immediate family, or the elector’s legal guardian from making any correction or addition to a previously-submitted written absentee ballot request.

Each violation up to the fifth violation is a first degree misdemeanor. Beginning with the fifth violation, each violation constitutes a third-degree felony.

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<sup>1</sup> *Jacobs v. Seminole Co. Canvassing Bd.*, No. SC00-2447 (Fla. Sup. Ct.) (December 12, 2000); *Taylor v. Martin Co. Canvassing Bd.*, No. SC00-2448 (Fla. Sup. Ct.) (December 12, 2000)

<sup>2</sup> *Jacobs v. Seminole Co. Canvassing Bd.*, No. SC00-2447, p. 8-9 (Fla. Sup. Ct.) (December 12, 2000) (quoting, in part, *Beckstrom v. Volusia Co. Canvassing Bd.*, 707 So.2d 720, 725-26 (Fla. 1998))

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

An impact analysis has not been received from the Criminal Justice Estimating Conference at the time this analysis was completed. Given the very small pool of potential offenders and the narrow scope of the criminal provisions at issue, however, Senate Bill 1712 will probably not have a significant impact on the State's current prison resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

## # 1 by Ethics and Elections:

Provides that upon the *third* violation of this provision of law, a person commits a third-degree felony. The original bill provided that upon the *fifth* violation, the criminal penalty would be elevated from a first-degree misdemeanor to a third-degree felony.